And then, I consider the learned President was wrong with respect to the evidence of accused 12. This evidence was not part of the case for the prosecution, and should not have been taken into consideration as it was against the appellant.

I must now consider whether the evidence regarding the finding of the labels in appellant's room was admissible. The admission of evidence of similar facts is one of the most difficult subjects of the criminal law and the principles which should guide the Court, though frequently laid down by the highest courts, are often difficult to apply to particular cases.

I can add nothing useful by attempting a further exposition on the subject. Indeed, I feel it would be presumptuous of me to try and do so. All I can do is to consider the question in relation to this case in the light of the judgments in *Harris v. Director of Public Prosecutions*[1]; *Makin v. Attorney-General for New South Wales*[2], *Noor Mohamed v. R.*[3]; *R. v. Straffen*[4]; *Thomson v. The King*[5]; *R. v. Rodley*[6] etc.

Mr. Charlesworth for the appellant submitted that the finding of the labels was similar to the finding of house-breaking tools in the house of a person charged with burglary where there was no evidence of breaking or of the method of entry. Evidence of such finding being inadmissible. It would, of course, be admissible if there was evidence of breaking by similar tools. Mr. Charlesworth argued that the labels in no way connected appellant with the offence and only showed on the worst interpretation a propensity for the offence of trafficking in opium. Mr. Charlesworth's arguments were persuasive, but in my view the evidence of the finding of the labels was admissible and relevant both to show *mens rea* and to rebut the obvious defence of innocent and fortuitous participation. In a statement to the Customs Officer, Exhibit P-28, the appellant had explained that the labels had been brought from school some time before by his children. I consider there are as good reasons for admitting this evidence as there were for admitting the photographs in *Thomson v. The King*[5] cited above.

If one disregards the possibility of the appellant's name being on the envelope addressed to Hup Seng Kongsi and the evidence of accused 12, as I repeat I consider the trial judge should have done, is there enough left to justify the conviction allowing for the prejudice that must have been wrongfully created in the President's mind? In other words, excluding the above, was the evidence sufficient to prove beyond reasonable doubt that the appellant was concerned with this importation of opium?

It may well be that the appellant's presence in Sungei Patani on the 8th June was fortuitous. Though rejected by the trial judge it is just possible that his explanation of his possession of the half dollar note was true. It could conceivably have happened that way. There still remains, however, direct and unexplained evidence which appears capable of only one interpretation.

Who would pay $400 for delivering a letter, involving a journey of a few hours, if an ordinary, honest business deal was involved? Why did the appellant concern himself, on his Sunday off with his family, with summoning Teoh Geik Seng from Penang and with the borrowing of $400? Why the spree with Teoh Geik Seng in Penang? What was there to celebrate? Why drive to Tanjong Dawai for Teoh Geik Seng "to go to sea" and thence take the car to Penang? All these activities in which the appellant took part willingly point directly to his being concerned with the importation of the opium. And then, locked away in his room and found at a time when he still probably did not know of the seizure of the vessel is a bundle of opium labels, which he admitted in Court receiving from and keeping for Teoh Geik Seng. A contradiction of the explanation given by him in Exhibit P-28.

On this evidence alone I do not consider that it can be said that there is any reasonable doubt that the appellant knowingly concerned himself with this ill-fated smuggling venture.

It is unfortunate that the learned trial judge erred in the manner he did, but I hold the view that no injustice was done thereby for though the learned President was undoubtedly prejudiced by his acceptance of the evidence of P.W. 15 with regard to the superscription on the envelope and by the evidence of accused No. 12, I consider that there was ample evidence besides this, not only to justify the conviction, but from which no other inference could reasonably be drawn but of the appellant's guilty participation.

The appeal is dismissed.

Appeal dismissed.

HARDIAL SINGH & ORS.
v.
MALAYAN THEATRES LTD.

[P. C. (Lord Porter, Lord Tucker, Mr. T. Rinfret (Chief Justice of Canada) and Mr. L. M. D. De Silva) July 20, 1953]

[Privy Council Appeal No. 16 of 1952]

Landlord and Tenant — Recovery of premises — Business premises — Alternative accommodation —

Reasonableness — Suitableness — Control of Rent Ordinance, 1947, s. 14(1)(m) now replaced by Control of Rent Ordinance, 1953, s. 15(1)(l).

The respondents (who were the defendants in the suit) were statutory tenants of the Theatre Royal. They originally obtained a lease of the premises for one year from the 1st of June 1946. The respondents' manager agreed in evidence that upon the expiration of the lease there was no agreement for a monthly tenancy, and the respondents "just held over". The appellants purchased the theatre for $300,000 on the 5th of August 1948 and have been receiving from the respondents 10% on their capital outlay by way of rent. The appellants' main business is a textile business. But as a side line they import Indian films from India, which they distribute to film exhibitors. They wanted possession of the Theatre Royal in order that they may themselves exhibit the films which they import. The respondents' business is that of film exhibitors. They operated seven other cinemas in Singapore, and were building another at the Naval Base. The learned trial Judge gave possession of the Theatre Royal to the appellants, saying: "Having considered all the facts of this case I am quite satisfied that it is reasonable that the plaintiffs who have been owners of the Theatre Royal since 5th August, 1948, and gave notice to quit at the end of 1948 should be put in possession of it." The Court of Appeal set aside the judgment of the learned trial Judge and from that judgment (reported in (1951) M.L.J. 212) the appellants appeal to the Privy Council. The Board in upholding the judgment of the Court of Appeal,

Held: it is not enough to make a general statement or express a general finding that because the tenants have a widespread business conducted at a number of premises, it must be possible for them to carry on by some kind of rearrangement the business for which the tenancy to be surrendered was in use. It must be shown that the business carried on in those premises can be adequately carried on elsewhere. There are two separate requirements for the exercise of the Court's discretion: (a) an order for possession must be considered reasonable by the Court; and (b) it must be established that there is suitable alternative accommodation. It is true that all the circumstances must be taken into account but after they have all been duly weighed it is still incumbent on the Court as an independent and essential requisite that suitable alternative accommodation exists or will exist when any order or judgment for possession takes effect. Unless this requirement is complied with no Court is entitled to make an order, however much it is persuaded that it is reasonable to do so, and though as in this case the learned Judge who tried the case finds it reasonable there was no evidence of suitable alternative accommodation.

[**Editorial Note:**— The Control of Rent Ordinance, 1947, is repealed by the Control of Rent Ordinance, 1953. Paragraph (l) of sub-section (1) of section 15 of the new Ordinance which reads: ". . . . (l) in any other case where the Court considers it reasonable that such an order of judgment be made or given and is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order or judgment takes effect", is similar to paragraph (m) of section 14(1) of the Control of Rent Ordinance, 1947, except for the words underlined.]

PRIVY COUNCIL.

Heathcote Williams, Q.C. and *Lionel Blundell* for the appellants.

Sir Hartley Shawcross, Q.C.; Frank Gahan, Q.C. and *F. R. N. H. Massey* for the respondents.

The judgment of their Lordships was delivered by:—

Lord Porter: — This appeal is concerned with the construction of the Control of Rent Ordinance being No. 25 of 1947 of the Colony of Singapore and with the circumstances in which it gives protection to a tenant remaining in possession under its provisions after his contractual tenancy has expired.

The Ordinance in question is founded upon the English Act of 1933 but in certain respects it gives a considerably wider protection to tenants. The provisions of the English Acts throughout their existence have been limited to cases where either the rent or rateable value is less than a specified quantum and also are confined to dwelling houses as opposed to business premises. The relevant Ordinance on the other hand contains no limitation of value and extends its protection to all premises whether used for business or as dwelling houses. Their Lordships may therefore at once state that they get very little assistance from cases which have been decided upon the terms of the English Act, since in their view principles applicable to the retention by tenants of places which are required as a home have very little bearing upon the position of a tenant who requires a place in which to conduct his business.

The Ordinance by section 14(1) prohibits the recovery of premises let to tenants except in certain specified cases. The terms which are directly applicable in the present instance are those contained in section 14(1)(*m*) and read as follows:—

"14 (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases: . . . . (m) in any other case where the Court considers it reasonable that such an order or judgment be made or given and is satisfied that suitable alternative accommodation is available for him when the order or judgment takes effect."

It is the application of these provisions to a case of a holding over of business premises which gives rise to the present dispute.

The broad facts are not in controversy. One branch of the appellants' business consists in the importation of Indian films from India which they distribute to film exhibitors.

The respondents who were at one time lessees of the Theatre Royal No. 635 North Bridge Road, Singapore, continued in possession after the expiry of their lease as monthly tenants under the Ordinance. Whilst they were still in possession the appellants on the 5th August, 1948, bought the Theatre Royal from the respondents' lessors. They made the purchase because they wanted possession in order that the 1st, 3rd and 4th appellants could exhibit films which would be sent from India by the 2nd appellant who deals in Indian films in Bombay. Accordingly they served

notice to quit on the respondents on the 29th November, 1948, purporting to terminate the contractual tenancy on the 31st December, 1948, and a further notice to quit in respect of the protected tenancy terminating on the 31st May 1950.

As the respondents, in spite of these notices, refused to vacate the premises the present action was brought on the 3rd October, 1950, claiming possession of the theatre, mesne profits or damages.

To this action the respondents claimed the protection of the Rent Ordinance and the sole dispute now existing between the parties is whether it has been established that it would be reasonable to oust the respondents from the premises and in particular whether there was available to the defendant suitable alternative accommodation.

The general facts are not in issue. The appellants, who are not in possession of any theatre in Singapore, are obliged to hire halls in which to show their films at heavy expense amounting on an average to about 50 per cent. of their takings, whereas if they were able to use the Theatre Royal their business could be carried on much more profitably and conveniently to themselves.

The respondents on the other hand own some eight or nine theatres in Singapore and are erecting a fresh one at the port, though this appears to be at a considerable distance from the city itself. Their object, it seems, is to acquire as many Cinema theatres as possible and indeed after the issue of the writ in the present case they acquired a theatre formerly known as the "Shirin" and now christened the "Sun".

It appears that some of the appellants' films have been shown at the Theatre Royal under the auspices of the respondents and there is evidence that some two or three at any rate of the other theatres which are in use by the respondents are suitable for the showing of Indian films. Without deciding the matter their Lordships are prepared to assume that such is the case and indeed are willing to assume that the films now exhibited at the Royal would be suitable for exhibiting at some at least of the other theatres, but whether they could be shown without interfering with or indeed putting an end to the exhibitions which are being carried out at those other theatres or could be shown at a profit has never been enquired into or established.

The problem therefore resolves itself in the question whether the respondents are obliged so to rearrange their business as to fit the programmes now arranged for and shown at the Royal into other theatres and if necessary close down or alter their performances in those others in order in this way to carry on the performances now taking place at the Royal in some one or more of the other theatres which are in their possession.

The best and perhaps the only way in which this argument can be supported is, as the appellants maintained, that the respondents' business must be regarded as a whole: they are exhibitors of films: provided they can carry on that business in some alternative accommodation even if the business is to some extent diminished, their rights are maintained: the fact that one source of profit is eliminated is not a vital matter.

This as their Lordships apprehend is the view of the learned trial Judge. He says:—

"I must now consider whether I am satisfied that suitable alternative accommodation is available for the defendants or will be available for them when any order or judgment I may make or give takes effect. Now a cinema is a particular type of premises run for the purpose of entertaining the public and in a city like Singapore such premises are limited. This is not just a case of a tenant who is endeavouring to continue in possession of his premises because they are necessary for the running of his business; it is the case of a tenant who wishes to continue in possession because, in the words of the defendants' Manager, 'we try to get as many theatres as possible'. In other words, it is the case of a tenant who wishes to acquire and control an ever increasing number of cinemas in Singapore. I cannot think that the Ordinance was framed to protect tenants of this class.

In this case the 1st plaintiff in his evidence has shown, and in fact it was not disputed by the evidence of the defendants' Manager, that the defendants are in possession of eight cinemas in Singapore other than the Theatre Royal. Further the Manager stated that the defendants were building a new cinema at the Naval Base, Singapore, which would be completed in a few months. Now the policy of what films should be shown in any particular cinema must be dictated by the person who has control of the cinema. It is therefore clear to me that in any of the eight cinemas controlled by the defendants Indian films could be shown if the defendants so desired, and therefore I am satisfied that there is suitable alternative accommodation for the defendants in one of the other cinemas of which they are in possession."

The Court of Appeal on the other hand were of opinion that alternative accommodation meant accommodation suitable for the carrying on of the business which had been displaced i.e. the business carried on at the Theatre Royal. Their words are:—

"But even if it were practicable and possible to overcome the objections to which I have referred, it would only be possible to transfer the business from the Theatre Royal to one or more of these other theatres by displacing the business which the appellants are now carrying on at the theatre or theatres to which the business from the Theatre Royal is transferred. And if the appellants are to be deprived of one set of premises I cannot see that accommodation at another set of premises can be regarded as available within the meaning of the Ordinance if it is only available to them by displacing the business which they are now carrying on at that other set of premises.

It seems to me that if the learned Judge had given full consideration to the various factors which collectively constitute the appellants' business he could not, upon the evidence, have been 'satisfied that there is suitable alternative accommodation for the defendants in one of the other cinemas of which they are in possession,' because in my opinion no such evidence exists. I would therefore allow the appeal with costs here and in the Court below."

Their Lordships find themselves in agreement with the opinion of the Court of Appeal rather than with that of the learned Judge and more especially with the

view that there is no evidence of suitable alternative accommodation at one or more of the theatres in the possession of the respondents.

It is quite true that the alternative accommodation is required to be available to the tenant and it is urged that if he can carry on his type of business adequately elsewhere it is immaterial that he cannot carry on that particular portion of it which was formerly centred in a particular place.

The observation has an element of truth but it must be remembered that the Ordinance is dealing with a dwelling or business at a particular place.

"No order or judgment for the recovery of possession of any premises comprised in a tenancy" is the phraseology used and in their Lordships' judgment this wording means that there must be shown to be alternative accommodation for the business carried on in those premises, not simply accommodation for carrying on the business of the statutory tenant in some different and diminished way by some kind of rearrangement in the mode of its conduct.

Their Lordships are not disposed to lay down a general rule to the effect that a multiple business can never be so dealt with as to make the closing of one of their multiple shops possible by the provision of alternative space in another or others. But there must be evidence that the business carried on at the premises about to be surrendered can be suitably accommodated in the remaining premises.

It is not enough to make a general statement or express a general finding that because the tenants have a widespread business conducted at a number of premises, it must be possible for them to carry on by some kind of rearrangement the business for which the tenancy to be surrendered was in use. It must, in their Lordships' opinion, be shown that the business carried on in those premises can be adequately carried on elsewhere. All that has been proved in the present case is that there are other premises in the possession of the respondents at which Indian films could be shown possibly at a profit.

Even if wholly true that, as their Lordships think, has no bearing on the question whether the films exhibited at the Royal which are now mainly Indian or the business now carried on there can be transferred to other suitable premises, or indeed that a complete or partial transfer would not necessitate the suppression in whole or in part of the activities at other theatres.

No doubt this conclusion is in some sense a hardship on the appellants, who own the one theatre only and can only get access to others by a heavy payment. Further it is urged that the learned judge was right in saying that the Ordinance was not framed to protect tenants of this class.

The question however of discovering what class of persons the Ordinance is meant to protect can only be solved by an exact construction of the provisions which it contains. Apart from its wording their Lordships are unable to speculate what its general intentions were or what its terms mean.

It might have been intended to have only a limited effect but there is nothing in its provisions to lead to such a conclusion. As has been pointed out it has no limit of values and no limit in the use to which premises may be put. It is couched in the widest possible terms and though the appellants' argument might be a ground for supporting a change in the policy of the legislature their Lordships would not be justified in construing the Ordinance in a sense which its terms do not warrant.

It was however further suggested, as their Lordships understood the argument, that both in the English Act and in the Singapore Ordinance the consideration which is placed first and is primarily to be considered is whether the Court considers the order for possession reasonable and what is to be regarded as suitable alternative accommodation must largely depend on the view which the Court takes of that earlier question. The circumstances, the appellants contend, must be considered as a whole and, if the Court in its discretion thinks that the premises should be returned to their owners, only scant proof of the existence of suitable alternative accommodation is required. Accommodation may be suitable, it is said, though much less convenient and differing in quality and quantity from that taken away, provided there is some kind of alternative accommodation and the Court thinks it reasonable to make the order prayed for.

In their Lordships' opinion, so to interpret the Ordinance is to give a discretion to the Court far beyond that which the wording permits.

In their view there are two separate requirements for the exercise of the Court's discretion (1) an order for possession must be considered reasonable by the Court; and (2) it must be established that there is suitable alternative accommodation.

It is true that all the circumstances must be taken into account but after they have all been duly weighed it is still incumbent on the Court as an independent and essential requisite that suitable alternative accommodation exists or will exist when any order or judgment for possession takes effect.

Unless this requirement is complied with no Court is entitled to make an order, however much it is persuaded that it is reasonable to do so, and though as in this case the learned Judge who tried the case finds it reasonable there was in their Lordships' view no evidence of suitable alternative accommodation.

In the present case therefore as they have indicated their Lordships are of opinion that the existence of suitable alternative accommodation has not been established. They will accordingly humbly advise Her Majesty that the appeal should be dismissed. The appellants must pay the costs of the proceedings before their Lordships' Board.

Appeal dismissed.

W. A. BALCH v. NIPPON YUSEN KAISHA

[O.C.J. (Brown, J.) July 24, 1953]

[Singapore — Suit No. 1447 of 1952]

Negligence — Invitee — Failure to give reasonable warning regarding the dangerous position of gangway — No lack of reasonable care on the part of the invitee — Doctrine of Common Employment — Merchant Shipping Ordinance (Cap. 150), s. 396(f) —Position of a Pilot in the Singapore Pilot Association defined.

The plaintiff, who was a pilot, was asked by the defendants to navigate their ship. He fell while ascending the gangway and suffered injuries. He alleged that the defendants' servants were negligent and claimed damages as an Invitee.

Held: (1) — (a) the gangway was in an unsafe condition owing to the lashing ropes having been unfastened, (b) no effective warning was given to the plaintiff, (c) in failing to give the plaintiff warning at a time when the gangway was not properly secured (the lashing ropes not being fastened) the defendants' servants were guilty of negligence, (d) the plaintiff shewed no lack of reasonable care in failing to see that the lashing rope was not fastened or that the gangway was not properly secured; (2) by virtue of section 396(f) of the Merchant Shipping Ordinance (Cap. 150) the pilot is compelled by law to take charge of a ship when required to do so; (3) the Doctrine of Common Employment does not apply; (4) the plaintiff is entitled to damages, which remained to be assessed.

Cases referred to:—

(1) *Smith v. Steele* L.R. 10 Q.B. 195.

(2) *Thom v. Hutchinson Ltd.* (1925) S.C. 386.

(3) *Kelley v. Shamrock Shipping Co.* 47 Ll. List L.R. 33.

(4) *Barrington v. Kent* (1947) 2 All E.R. 782.

(5) *Alan France v. "Polartank"* (1949) L.J. 423.

CLAIM IN DAMAGES.

Dr. C. H. Withers-Payne for the plaintiff.

K. Gould (*F. W. Cashin* with him) for the defendants.

Brown, J.: — On the 11th of July 1952 the plaintiff, who was a licensed pilot and a member of the Singapore Pilot Association, was ordered to proceed to the defendants' vessel, the "Mantetsu Maru." The plaintiff left the Pilot Office by car at 10 minutes to 3, and arrived at the gangway of the ship at 3 minutes to 3. The bottom of the gangway was resting on the wharf, and according to the Quartermaster of the ship the top of the gangway was resting on the top of the bulwark. It appears that the gangway was not in that position for the purpose of receiving the pilot, who was expected to arrive from the sea-side. It was in fact about to be lowered to the wharf, as the gangway was the property of the Harbour Board. According to the defendants' evidence, the plaintiff came running up the gangway, and that caused the gangway to slip, with the result that the sudden fall must have caused the lowering rope to break. The gangway fell to the ground, with the plaintiff on it, and the plaintiff suffered the injuries in respect of which he claims damages in this action. The lowering rope is in evidence as Ex. 1. Mr. Nightingale, who has had 22 years experience of carrying out tests of cordage for the Admiralty, says that there are no internal or external defects, and that the rope is a normal 3 inch manilla rope, which had probably been in use for 3 or 4 months. The evidence is that the rope was new 5 months before this accident.

The Statement of Claim alleges that the plaintiff was an invitee. I think it must be accepted that if a gangway is in the position which this gangway was, and no warning is given that the gangway is not to be used, that is an invitation to use it. But it is the duty of an invitee to use reasonable care for his own safety. And the defence is pleaded that the plaintiff failed to use reasonable care because he failed to observe that the defendants' servants were engaged in unshipping the gangway.

In order to lower the gangway to the wharf the lashing ropes, which lash the gangway to the ship, must first be unfastened and removed, and the gangway is then lowered by means of the lowering rope (Ex. 1). It seems to me that the questions of fact which I have to determine are, firstly, what stage in this operation had been reached when the plaintiff boarded the gangway; and secondly, whether the plaintiff by the exercise of ordinary care (bearing in mind his experience of ships) could have seen that this operation was in progress. In the Master's report to the Wharf Superintendent, which was made on the same day, this accident is stated to have been caused by the lashing securing the gangway being carried away. I have no doubt from the evidence that before the plaintiff boarded the gangway one lashing rope had been